

MINUTES OF THE OPEN SESSION OF THE RHODE ISLAND ETHICS COMMISSION

October 23, 2007

The Rhode Island Ethics Commission held its 18th meeting of 2007 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, October 23, 2007, pursuant to the notice published at the Commission Headquarters and at the State House Library.

The following Commissioners were present:

**James Lynch, Sr., Chair Richard E. Kirby*
Barbara R. Binder, Vice Chair James C. Segovis
George E. Weavill, Jr., Secretary Ross Cheit**

Also present were Kathleen Managhan, Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Steven T. Cross and Peter J. Mancini.

At approximately 9:23a.m., the Chair opened the meeting. The first order of business was a motion to approve minutes of the Open Session held on October 9, 2007. Upon motion made by

Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously

VOTED: To approve the minutes of the Open Session held on October 9, 2007.

ABSTENTIONS: Barbara R. Binder and Ross Cheit.

The next order of business was advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of John A. Flaherty, a member of the North Smithfield Planning Board. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner advised that he has been recusing out of an abundance of caution, but stated his belief that he that a direct financial gain or loss is not likely to occur. He indicated that, given the nature of his work and the fact that there are thirty-two members of the Board of Directors, he may not wish to continue to serve when his original term expires in December.

As an alternative to recusal, the petitioner suggested that he be required to make a public disclosure when a representative of the Board member's company appears before the Planning Board on behalf of an applicant. In response to Chair Lynch, Staff Attorney DeVault stated that the draft opinion sought to avoid setting a blanket

precedent and to avoid clear violations. She noted that it might be problematic for the petitioner if the situation were to occur so frequently. The petitioner advised that he receives an agenda approximately one to one and a half weeks prior to the meeting, so there is not always enough time to seek an advisory opinion. He represented that he would always recuse if a Grow Smart Board member appeared, but inquired whether he would be required to recuse if individuals who work at the Grow Smart Board members' companies appear.

The petitioner referenced page three of the draft and inquired whether there is a distinction being drawn between Bank RI and other businesses which employ Grow Smart Board members. Commissioner Weavill stated he was confused on the same point. Staff Attorney DeVault clarified that the draft states that he must recuse if a person sitting on the Board of Directors appears. She explained that she is not making a recommendation regarding recusal when an employee of the Board member's company appears, which would require a matter by matter analysis. In response to Commissioner Weavill, the petitioner stated that Dennis DiPrete is a principal of the firm and the firm stands to gain even when another representative of the firm appears before the Planning Board. He advised that the persons sitting on the Grow Smart Board are not the owners. He reiterated that it does not make sense for him to renew his appointment to the Planning Board if he has to recuse.

Commissioner Segovis noted that the person appearing before the Planning Board may not be an owner of the company, but is appearing under his authority. Commissioner Weavill indicated that they are very closely aligned and if a project is rejected at the pre-application stage it is a very different situation than if it proceeds all the way through. Commissioner Cheit commented that the petitioner is asking for an opinion on a whole series of hypothetical situations. Commissioner Weavill stated that these people do appear before the petitioner all the time. The petitioner indicated the he would have to keep coming back to the Commission for additional opinions. Commissioner Segovis suggested that it might be a signal that he should choose one position in which to serve. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Cheit, it was

VOTED: To issue an advisory opinion John A. Flaherty, a member of the North Smithfield Planning Board.

AYES: James C. Segovis, Ross Cheit, Barbara R. Binder and James Lynch, Sr.

NOES: George E. Weavill, Jr.

Chair Lynch explained that no advisory opinion would issue due to a lack of five affirmative votes and that the petitioner would proceed at his own risk.

The next advisory opinion was that of Margaret L. Hogan, Esq., a member of the Town of Charlestown's Charter Revision Advisory Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The petitioner was present. In response to Commissioner Weavill, the petitioner stated that the Committee would not make recommendations regarding ordinance changes and would address the composition of boards by Town Charter. In further response, she clarified that some boards have minimum and maximum memberships established by statute. Upon motion made by Commissioner Weavill and duly seconded by Commissioner Cheit, it was unanimously

VOTED: To issue an advisory opinion, attached hereto, to Margaret L. Hogan, Esq., a member of the Town of Charlestown's Charter Revision Advisory Committee.

The next advisory opinion was that of George M. Abbott, a Chariho Regional School Committee member. The petitioner was not present. Staff Attorney Gramitt advised that the matter was tabled at the last meeting to enable greater participation by the membership. Chair Lynch and Commissioner Weavill suggested that the opinion should be further continued for the same reason given that it implicates policy. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Binder, it was unanimously

VOTED: To table the matter until the next meeting.

Commissioner Binder inquired if the petitioner would retain safe harbor. Commissioner Segovis expressed that he is comfortable with it. In response to Commissioner Weavill, Staff Attorney Gramitt stated that he is unaware of any urgency to the request. Commissioner Cheit also stated his agreement and suggested to the Director that a reminder to the Governor regarding the need to fill existing vacancies might alleviate the situation. Executive Director Willever replied that he has notified the Governor and has had recent communication with his Office regarding the issue. He advised that he will be meeting with the Governor's Executive Counsel next week and has also met with representatives of the Senate and discussed the issue.

The next order of business was a discussion regarding the definitions of family members enumerated in Regulation 5004, Nepotism. Based upon the Commission's prior action, Staff Attorney Gramitt suggested that the item be tabled. Chair Lynch and Commissioner Cheit stated their agreement.

At approximately 10:04 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Segovis, it was unanimously

VOTED: To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a) (4), to wit:

a.) Motion to approve minutes of Executive Session held on October 9, 2007.

**b.) In re: Frank A. Ciccone,III
Complaint No. 2007-3**

**c.) In re: Raymond E. Gallison, Jr.
Complaint No. 2007-1**

**d.) In re: Frederic C. Crowley,
Complaint No. 2007-2**

**e.) In re: Kelley Morris,
Complaint No. 2007-4**

f.) Motion to return to Open Session.

The Commission reconvened in Open Session at approximately 11:20 a.m. *Commissioner Kirby arrived during the Executive Session and departed prior to its adjournment. Chair Lynch reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on October 9, 2007; 2) granted a sixty (60) day extension of time in the matter of In re: Frank A. Ciccone, III, Complaint No. 2007-3; 3) granted a sixty (60) day extension of time in the matter of In re: Raymond E. Gallison, Jr.,

Complaint No. 2007-1; 4) granted a sixty (60) day extension of time in the matter of In re: Frederic C. Crowley, Complaint No. 2007-2; and 5) dismissed Complaint No. 2007-4, In re: Kelley Morris, for insufficient allegations to support a knowing and willful violation of the Code of Ethics.

The next order of business was a motion to seal minutes of the Executive Session held on October 23, 2007. Upon motion made by Commissioner Segovis and duly seconded by Commissioner Weavill, it was unanimously,

VOTED: To seal minutes of the Executive Session held on October 23, 2007.

Executive Director Willever suggested that the Financial Disclosure Update be continued to the next meeting, along with the Director's Report, given that some members have indicated that they must soon depart.

At approximately 11:21 a.m., upon motion made by Commissioner Weavill and duly seconded by Commissioner Binder, it was unanimously

VOTED: To adjourn the meeting.

Respectfully submitted,

George E. Weavill, Jr.

Secretary